

UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MARYLAND

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LIFE TECHNOLOGIES CORP. :
Plaintiffs :
:
:
:
vs :Civil Action:RWT-10-3527
:
:
LIFE TECHNOLOGIES CORP., :
et al, :
Defendants. :
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Monday, March 12, 2012
Greenbelt, Maryland

The above-entitled action came on for a Motions Hearing before the HONORABLE ROGER W. TITUS in courtroom 2C, commencing at 11:35 a.m.

APPEARANCES:

On behalf of the Plaintiff:

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24	<u>Page</u>
25	Reporter's Certificate.....55

1 THE CLERK: The matter now pending before this
2 court is civil docket number RWT-10-3527; Life
3 Technologies Corporation versus Life Technologies
4 Corporation, et al. We're here for a motions hearing.

5 If I could please have counsel identifies
6 themselves for the record.

7 MR. JAEGERS: Your Honor, Eric Jaegers, from the
8 law firm of Troutman Sanders, on behalf of the Plaintiff.

9 MS. MANN: Good morning, Your Honor. Sarah Mann,
10 from Bodie Dolina, on behalf of the Plaintiff as well.

11 THE COURT: All right. We're here for a hearing
12 on three motions: The Plaintiff's Motion for Partial
13 Summary Judgment, the Plaintiff's Judgment for Sanctions,
14 and the recently filed Motion for Default Judgment.

15 I also want to note that I have received a letter
16 this morning from a principal of the Defendant
17 corporation; I've reviewed that. It is -- I'll have it
18 made a matter of record, but it is not a pleading that
19 can properly be considered on behalf of the corporate
20 defendant. The corporate defendant can only appear
21 before the Court through counsel. There has been no
22 counsel entering an appearance, so we will proceed to
23 hear arguments on this matter ex parte.

24 Mr. Jaegers, who wishes to proceed first?

25 MR. JAEGERS: Thank you, Your Honor. We do have

1 these three motions pending. I know that the Court is
2 very well versed in all of them, as well as the facts in
3 this matter. Is there one that the Court would like me
4 to start with?

5 THE COURT: Summary Judgment.

6 MR. JAEGERS: Yes, sir. Your Honor, there is in
7 the Fourth Circuit, just like every circuit, they're
8 almost identical, elements for showing liability for
9 trademark infringement. Plaintiff here, and I will refer
10 to my client as "Plaintiff," since the names are
11 identical here. I have to show that the plaintiff owns
12 the mark that is the subject of the lawsuit. I have to
13 show that the defendant has used the mark in commerce and
14 without -- without authority or consent from the
15 plaintiff, and that the defendant's use is likely to
16 cause consumer confusion.

17 As to the first element. Your Honor, there is no
18 dispute that the plaintiff owns the mark "Life
19 Technologies." It has been using that, I believe, since
20 1999, and that's in the record under the Blankenbeckler
21 Declaration submitted with the Summary Judgment papers.
22 So there is no dispute that they own the mark.

23 There is also no dispute that the defendant used
24 the mark. In Exhibit N, among other things, to the
25 Summary Judgment papers, it talks -- is a Web site used

1 to sell goods and services over the Internet. It uses
2 "Life Technologies" throughout. Notably, and this is
3 relevant on -- as it relates to any number of these
4 motions, Your Honor, at the very bottom it says "Life
5 Technologies, USA," not any Indian company that owns or
6 controls it. It's "Life Technologies, USA."

7 There is also no dispute that the defendant did
8 not have authority, consent, or license from the
9 plaintiff to use the mark; that's in the Blankenbeckler
10 Declaration. Certainly, there's no evidence submitted
11 that would prove otherwise.

12 Finally, Your Honor, on the third prong of this
13 test, the Consumer Confusion Test. There are generally
14 six elements recognized by the Fourth Circuit.
15 Plaintiff's mark is strong and distinctive, which is
16 typically gauged through its commercial strength. All
17 the evidence in this case submitted throughout the
18 Blankenbeckler Declaration and its attending exhibits
19 shows that it's -- I'm sorry, Your Honor. The mark has
20 been in use since 1986.

21 Life Technologies has 50,000 products; 75,000
22 customers worldwide. Its products are in 90 percent of
23 the laboratories in the United States. It's a publicly
24 traded company. Billions of dollars in revenues. In the
25 last four years they've spent \$150,000,000 advertising

1 that mark. It's well known, enormously strong, and has a
2 lot of commercial strength, certainly, within the biotech
3 and Life Sciences industries.

4 Secondly, under this test, Your Honor, the Court
5 has to evaluate whether the Defendant's mark is similar
6 to the Plaintiff's mark. Here, there is no doubt it's
7 identical. "Life Technologies" is what the plaintiff
8 has. The defendant has been using "Life Technologies."
9 It's in their corporate name. It's how they do business.
10 That's how they present themselves to the world. It's
11 all over the Web site. It's all over the product
12 specimens submitted with their trademark applications.

13 Plaintiff has a registered mark for "Life
14 Technologies." It's got pending registrations for Life
15 Technologies as well under different classes of
16 international classes. And the -- Your Honor would see
17 the specimen submitted, the actual specimens submitted,
18 are slightly different as well.

19 In addition to Life Technologies, the defendant
20 has used several confusingly similar variants: "Life
21 Tech" as two words; "LifeTech" as one word; "Life" in
22 connection with Life Sciences products, biotechnology,
23 and everything that would fall under "life" -- under Life
24 Sciences. The variants used by Defendant are nearly
25 identical because they use "Life Technologies," maybe

1 with a design. Maybe they use "LifeTech" with a design,
2 but they are confusingly similar.

3 And the similarity going to the issue, Your Honor,
4 with regard to the design is word end design marks.

5 Composite marks. The similarity is gauged in terms of
6 appearance, sound, meaning, connotation, commercial
7 impression, and the similarity focuses on the word
8 portion of any mark. The design portion is not the
9 dominant part of the mark, it's the word portion.

10 Because in speaking orally, people say "Life
11 Technologies." They don't necessarily describe the
12 design portion of a mark. So, the word -- and when
13 you're looking at it on the page, you're reading,
14 physically reading, the words "Life Technologies."

15 And courts, including the Fourth Circuit, just
16 across the board, focus on the word portion of any mark
17 such that even though the Defendant has variants of
18 Plaintiff's registered mark. Those are also confusingly
19 similar for those reasons.

20 THE COURT: Let me ask you this, then.

21 MR. JAEGLERS: Yes, sir.

22 THE COURT: I've reviewed the papers, and I want
23 you to continue with your description, but my
24 understanding from the papers filed by prior counsel for
25 the defendant, which is essentially reiterated in the

1 papers that he -- the corporate president submitted to
2 the Court today, that they're willing to give up and
3 surrender. And the real question is that you want too
4 much in an order. So, along the way, make sure you
5 address that. And it does not appear that they dispute
6 that there is an infringement of the mark.

7 MR. JAEGERS: Your Honor, I don't think that they
8 do as well. And I actually had -- in preparing for this
9 hearing here, you know, I was going to address the issue
10 -- basically what they've called our bullying of the
11 defendant.

12 THE COURT: Well, over and over again I've seen
13 the David and Goliath argument being made.

14 MR. JAEGERS: Yes, sir.

15 THE COURT: You know, Davids are entitled to
16 enforce their rights against Goliaths, and Goliaths are
17 entitled to their right to enforce their rights against
18 Davids. It doesn't make any difference to me that you're
19 big and the defendant is small. The real question is,
20 has the defendant done something that requires the relief
21 that the plaintiff seeks and in scope that the plaintiff
22 seeks?

23 As I understand the defendant, they're arguing
24 that you want a scope that is beyond their ability to
25 give. They contend that there's other entities that

1 they have no control over. I think your response has
2 been, surely you must jest; these entities clearly are
3 related. Clearly, things have been registered on behalf
4 of this LT-India by this defendant on behalf of that
5 corporation. So, to suggest that he didn't have anything
6 to do with his nonsensical -- I think that's a summary of
7 what you're saying; is that correct?

8 MR. JAEGERS: Your Honor, basically, yes. But to
9 point to that issue right now -- I mean, we understand
10 what we can and can't get here. I mean, we can't force
11 an Indian entity who is not a party here to give up
12 Indian trademark rights.

13 THE COURT: You're addressing that in Indian
14 courts right now.

15 MR. JAEGERS: We are. What the defendant has
16 termed as "bullying" here really is more accurately cast
17 as Plaintiff trying to protect its rights. Now,
18 Plaintiff has -- in the context of this lawsuit, Your
19 Honor, before we filed suit we tried to engage the
20 defendant and Dr. Krishnamurthy in settlement
21 discussions, and they forced us to file suit. So we had
22 to file suit. And we've gone through this and we have
23 propounded discovery. We've tried to get a deposition.
24 All of that's been refused. They haven't participated in
25 that way. Now we're forced to confront these motions.

1 So, none of that is bullying. That's Plaintiff, Life
2 Technologies, protecting its rights.

3 And in terms of trying to -- trying to settle.
4 And we have -- Your Honor, I cannot tell you how hard we
5 have worked to settle this case. We started working back
6 last summer, through the fall, even into the winter. I
7 know Your Honor is aware of -- I think we filed four
8 motions to continue or delay the time that we had to
9 respond to certain opposition -- reply to certain
10 oppositions. And we just -- we haven't been able to
11 reach a settlement.

12 Part of that settlement is, yes, we would like --
13 in the settlement context, we would like to have a global
14 settlement and try to resolve all of these issues,
15 because we know very well -- even though we were denied
16 in the discovery process, we know very well that
17 Dr. Krishnamurthy is heavily involved with that Indian
18 company. And despite what he says, he has control and
19 influence over that company, and that is marked
20 throughout the papers here. He registers domains.
21 He's a director of the Indian company. He is a director,
22 and his wife is a director as well. I believe it's
23 called "Directress" in the formal Indian trademark
24 document we filed as Exhibit 2 -- I'm sorry, Exhibit 1 to
25 the Anderson Declaration to the supplemental letter

1 declaration that we filed. So, in the settlement
2 context, we know very well what this Dr. Krishnamurthy is
3 able to do, and he's refused to do it and that's okay.
4 But that's why we're here today.

5 Also, we wanted Dr. Krishnamurthy to sign
6 individually on behalf of any settlement agreement here.
7 We wanted the corporation to be bound and we wanted
8 Dr. Krishnamurthy to be bound, and he refused to sign --
9 to be -- to agree to be bound individually. So, in terms
10 of what we're trying to get in this lawsuit, we
11 understand the constraints that we're working under in
12 terms of what we can and can't get. But in the
13 settlement context, we were trying to get the entire
14 thing taken care of as between the interested parties,
15 and it didn't happen. We get that. We're here to get
16 the relief that we think we're entitled to.

17 In the papers filed, Your Honor -- and I did
18 receive, about five minutes before the hearing this
19 morning, the same document that you mentioned earlier in
20 terms of what was filed with the Court.

21 Dr. Krishnamurthy is here and handed that to me, and I
22 read it briefly.

23 THE COURT: I didn't find anything new.

24 MR. JAEGERS: I didn't find anything --

25 THE COURT: It was very consistent with what his

1 counsel had filed on behalf of the corporation
2 previously.

3 MR. JAEGERS: I'm sorry?

4 THE COURT: It's basically Goliath is trying to
5 crush David. I wanted to give them everything they want,
6 and they want more than I can give. That's the short
7 version, I think, of what it says.

8 MR. JAEGERS: It is, Your Honor.

9 And in terms of what we are entitled to here.
10 Your Honor knows very well what we're entitled to. But
11 in terms of -- I mean, you know, the case law and the
12 statutes say what we get. The Federal Rules, though,
13 allow us -- as we discussed in the default motion, the
14 Federal Rules allow us to include as bound parties or, I
15 think, the term in the actual rule is "persons to be
16 bound by an injunction: Officers, directors, owners,
17 agents of a company, and anybody in active concert or
18 participation with them." That's the basis under which
19 we, obviously, filed our default motion, but that's also
20 the basis under which we were trying to get
21 Dr. Krishnamurthy to sign individually on behalf of -- I
22 mean individually under a settlement agreement.

23 So, what we're asking for is exactly what we're
24 entitled to. And the fact -- I think a lot of the
25 attorney argument, even from his prior counsel, as well

1 as the document we received today, contains the issue of
2 settle- -- what we were asking for in settlement versus
3 what we're asking for in this lawsuit. But in any event,
4 Your Honor, the defendant and Dr. Krishnamurthy have
5 refused to acknowledge liability before the case was
6 filed. They refused to acknowledge liability, and they
7 forced us to sue them, and they still refused to engage
8 in any meaningful settlement discussions.

9 Basically, the defendant here is trying to force
10 us -- after forcing us to sue, they're trying to force us
11 to capitulate to their unilateral settlement demands, and
12 that's not the way it works. And we didn't -- we gave
13 our own settlement demands. They balked.

14 In fact, the last settlement agreement that I sent
15 after counsel disengaged on January 23rd, never heard a
16 word from Dr. Krishnamurthy. I sent that on February
17 1st; still trying to do something with this case. We
18 didn't get any red line version back or any comments. No
19 discussion. Radio silence, Your Honor.

20 Does that address your concern over that point?

21 THE COURT: Yes. I wanted to make sure you
22 understood. I agree with you that, typically in a case
23 like this, an order is going to say that the defendant,
24 its officers, etcetera, other persons with knowledge of
25 this injunction, etcetera, are required to comply with

1 it.

2 MR. JAEGERS: And that's exactly why we wanted him
3 to sign it. We wanted his wife to sign it too and she
4 refused. Then subsequently, Dr. Krishnamurthy also
5 refused. And just in this context, Your Honor, just to
6 touch base on this a little bit more. The document that
7 we received today. May I, Your Honor?

8 THE COURT: You may.

9 MR. JAEGERS: The document that we received today
10 says that Dr. Krishnamurthy's wife -- if Your Honor would
11 give me a moment to locate it here.

12 THE COURT: Take your time. This is something you
13 just got, so I'm being very patient with you. Don't
14 worry about it.

15 MR. JAEGERS: Your Honor, in paragraph 10 on the
16 third page of the document that was -- well, it says it
17 was filed 03/09 of 2012 but which we got the day. The
18 statement is, "My wife is not an owner or an officer or
19 an employee of this corporate entity," referring to the
20 Defendant. "Hence, I plead her name should not be part
21 of this civil case at all." Well, Your Honor, Exhibit 1
22 to the Anderson Declaration to the supplemental letter
23 briefs that we filed say that she's a director --
24 directress, I believe, of the Indian entity. But that
25 document references Life Technologies, USA and then it

1 lists both of them. She is intimately involved with the
2 defendant here.

3 Dr. Krishnamurthy's own declarations in this case,
4 the one submitted in opposition to our Summary Judgment,
5 says that my wife and I started the Defendant in, I
6 believe it's 2002. And then I believe that's paragraph
7 five of his declaration, Your Honor. Two paragraphs
8 Later, in paragraph seven, he says -- I don't have it in
9 front of me, Your Honor, so I'm going by memory. But
10 paragraph seven, I believe, says in 2004 I and my wife
11 decided to change the name. It's a joint effort by both
12 of them. She's involved.

13 Your Honor, I'm not a Maryland attorney so I don't
14 know what the spousal rights are with regard to
15 ownership, and we don't have any discovery showing that.
16 But in any event, under Rule 65, she is an owner, an
17 officer, and an agent. She falls squarely within that
18 definition, and I believe that's 65(B)(a) through (C) if
19 I am remembering right.

20 But Your Honor, I'll go back, unless you have any
21 other questions, to where I was.

22 THE COURT: I'm looking at your proposed order. I
23 take it your position is that where you requested the
24 Court enter an order ordering, one, and this is quoting
25 from your order, "Defendant and its employees, servants

1 agents, dealers, attorneys, successors, and/or assigns,
2 and all person in active concert with it/them," etcetera,
3 that you would consider to be within the scope of that
4 both the defendant and his wife.

5 MR. JAEGERS: Dr. Krishnamurthy, the defendant
6 principal, and his wife. Certainly.

7 THE COURT: Right.

8 MR. JAEGERS: Absolutely.

9 THE COURT: Okay.

10 MR. JAEGERS: Your Honor, back on the likelihood
11 of confusion issue. I believe we stopped off just short
12 of the third element, the third of six elements that the
13 Fourth Circuit generally considers, which is the
14 similarity of goods and services. Defendant and the
15 Plaintiff are --

16 THE COURT: There is no question that that's
17 satisfied here.

18 MR. JAEGERS: Well, thank you. You know, we cited
19 the Microsoft versus Gray computer case that says it's
20 rarely necessary to look beyond the mark to see if there
21 is infringement if they're in competition, which is
22 exactly the case we have here.

23 Fourth, Your Honor, did the defendant intend to
24 cause confusion? I think that is not seriously in
25 dispute here, given the defendant and Dr. Krishnamurthy's

1 conduct. I don't think there is any doubt that the
2 defendant and Dr. Krishnamurthy -- and Your Honor, if I
3 say "Dr. Krishnamurthy," I'm speaking of him as the
4 principal of the Defendant, unless I say otherwise.

5 THE COURT: All right.

6 MR. JAEGERS: There's no doubt that he knew about
7 the plaintiff. They're in the same business and they
8 compete. Dr. Krishnamurthy selected and continues to use
9 the identical mark, plus confusingly similar variants of
10 Plaintiff's registered mark. Dr. Krishnamurthy, in his
11 declaration, and I believe it's paragraph three of his
12 declaration submitted in opposition to the Summary
13 Judgment motion, says he has a bachelor's degree in Life
14 Sciences, a masters degree in Life Sciences and a Ph.D in
15 Life Sciences. His office is currently less than a mile
16 away from the plaintiff's former headquarters here in the
17 Baltimore-Washington area, Your Honor.

18 In addition, just in terms of intent -- and this
19 is a focal point in this case, Your Honor, and it will be
20 front and center on an Exceptional Case motion. I don't
21 think that there is really any kind of serious dispute
22 that the defendant filed two trademark applications. On
23 August 27th 2009 those were Section 1(a) applications,
24 not intent to use but already in use and commerce. And
25 he represented in 2009 that he had been using them for

1 seven years already.

2 Two months later, in October, I believe it's
3 October 27th of 2009, Your Honor, the USPTO sends an:
4 "Office Action" to Dr. Krishnamurthy's attorneys giving
5 it an initial refusal to register his two applications
6 because of likelihood of confusion with the plaintiff's
7 marks. Not just the plaintiff's -- and the plaintiff's
8 registered mark and two pending applications that the
9 plaintiff had at the time. They referenced the numbers
10 and they gave exemplars, the actual specimens that the
11 plaintiff gave with its applications. It gave those
12 specimens to the defendant.

13 Regardless, we think Dr. Krishnamurthy is a long
14 time Life Sciences business person. He's a scientist.
15 We think he's known about Life- -- plaintiff Life
16 Technologies for many, many years. But certainly,
17 certainly as of October 27th 2009, he was on notice and
18 that is not in dispute. And what does he do? He
19 continues to operate under the Life Technologies name
20 here in Maryland. He continues to operate a Web site,
21 which is Exhibit N. The pages that we printed off are
22 Exhibit N to the Blankenbeckler Declaration in support of
23 the Motion for Summary Judgment. And then February 24th
24 2010, five months after he's on actual notice of our name
25 and marks and registration, our applications, he files

1 two more applications for the identical marks in
2 different international classes.

3 He has known, and he has continued to operate, and
4 it has been on purpose; it has been intentional. I know
5 Life Technologies. They're huge in this country. Ninety
6 percent of the labs want to trade on their name. That's
7 exactly what he has done for years. It has been a
8 systematic, concerted effort by Dr. Krishnamurthy to do
9 this. It has just been a pattern, just a series of
10 events, that when you step back, the pattern is I want to
11 trade on this well known name which is the plaintiff's
12 name, and the plaintiff has all rights to it.

13 Your Honor, just -- the fifth issue is whether the
14 defendant and the plaintiffs used the same trade channels
15 and the same mode of advertising. There is no dispute
16 that both plaintiff and defendant used the Internet to
17 sell and advertise and promote their goods and services.
18 The Blankenbeckler Declaration sets that out very
19 clearly. Just go to Life Technologies.com and you will
20 come up with the plaintiff's Web site. If you used to go
21 Life-Technologies.com, you would see what you get at
22 Exhibit M to the Blankenbeckler Declaration which is the
23 same thing.

24 And going back also, Your Honor, to the intent
25 issue for just a second. The applications that the

1 defendant has have a little design that goes along with
2 it, and it's basically an L, a white L -- it's in the
3 record, and it is in the proposed order on the default,
4 Your Honor, several times. And it's got a little dot on
5 top of it. If you -- Your Honor, if you turn to the
6 proposed order on the default, I think it's referenced in
7 there three times side-by-side.

8 THE COURT: Oh, yes. I remember that. Yeah.

9 MR. JAEGERS: Of those two images, those two
10 designs, the one without the dot on top of it is Life- --
11 plaintiff Life Technologies' old registration. That's a
12 cancelled mark. But the one without the dot, and it's a
13 very unique design; it looks like an L, a white L, inside
14 of a black circle, but the L is fanciful and could very
15 easily be construed as a double helix of a DNA strand
16 which fits right in line with the Life Sciences motif
17 and business that both the parties here are in. Right
18 next to it you see the exact same design with a little
19 dot on top of it, and Dr. Krishnamurthy selected that.

20 I would submit to the Court that it is enormously
21 unlikely, if not absolutely impossible, that the
22 identical L-shaped -- L in a circle was created
23 separately without help by Dr. Krishnamurthy without help
24 from looking at the previous, either cancelled trademark,
25 or having known about Life Technologies over the years

1 actually using that mark before it was cancelled.

2 Now, throughout this case, Your Honor, and this
3 actually parallels and applies to several of these
4 different motions we have, you know, Dr. Krishnamurthy
5 has actively sought to pass the buck and push blame off
6 to any number of people. He has alternately blamed his
7 lawyers for maybe not explaining to him the nature of a
8 Section 1(a) trademark application for use in commerce.
9 He has blamed the writer that he hired for an overly
10 optimistic or too rosy of a projection of the business of
11 the defendant in the newsletter that was also submitted
12 as a specimen in connection with those Section 1(a)
13 applications.

14 He blames his Life Tech India -- LT-India, the
15 Indian corporation. He blames his partners for any
16 number of things. He's not -- Dr. Krishnamurthy is not
17 responsible for the content on the Web site. They sent
18 him specimens, pictures of specimens rather than actual
19 specimens. The point is, Your Honor, he also, in this
20 instance, blames a graphic designer for just somehow or
21 another coming up with the perfect L in a circle with a
22 dot on top of it design for his applications. At some
23 point, Your Honor, Dr. Krishnamurthy needs to be held
24 accountable for his actions, and there has to be some
25 invalidating consequence to what he's done. So, in terms

1 of intent, there is a laundry list of things that point
2 to just a pattern of concerted, intentional effort to
3 trade on the plaintiff's mark.

4 Now, Your Honor, the last point in this likelihood
5 of confusion issue deals with -- at least as we've
6 addressed it in our papers, there are a number of
7 elements to the likelihood of confusion that the Fourth
8 Circuit recognizes. But the point is not all of them --
9 any one of them can be dispositive. I think what we've
10 talked about before is this unquestionably requires a
11 finding of trademark infringement liability. But not --
12 the point is not all of the elements must be necessary in
13 order to find the likelihood of confusion. We don't have
14 any evidence of actual confusion. We don't have
15 testimony or a letter from somebody who bought one of the
16 defendant's products and said, oh, gee. We thought they
17 were yours. We were confused.

18 THE COURT: The folks at the PTO found confusion.

19 MR. JAEGERS: Yes, they did. Yes, they did. But
20 that typically, at least as far as my experience Your
21 Honor, doesn't satisfy the --

22 THE COURT: I understand that. But they have a
23 lot more experience in this field than I do. I'll give
24 it whatever it's due.

25 MR. JAEGERS: But the point is, Your Honor, that,

1 you know, certainly a lack of actual confusion carries
2 little weight. The *Majestic Distilling* case, in addition
3 to numerous others in this circuit -- and I believe the
4 *Majestic Drilling* may be a Maryland case. It sets that
5 out very clearly. You don't need all of the elements
6 and, certainly, actual confusion. Actual confusion. In
7 my experience Your Honor, is icing on the cake. If you
8 can get it, great. If you don't, it means very little.

9 Your Honor, just to sum this up. None of this has
10 been seriously disputed by the defendant. There are
11 several statements in some of the filings that the
12 defendant has made that concede some of these things but
13 don't come out and say we concede everything. This is
14 what we concede, you know, elements one through three and
15 then sub-elements one through six or nine or -- we don't
16 have that. They've -- a general -- there's been a
17 general sense of concession on the defendant's part.

18 But since we're -- but we've been forced to come
19 here and, you know, present this to Your Honor. And the
20 things that I've just gone over -- you know, to the
21 extent that the Court required any proof under the
22 default motion, the same elements we've just discussed
23 are also discussed in our default motion. And the same
24 exhibits accompany the default motion for proof.

25 THE COURT: All right.

1 MR. JAEGERS: Your Honor, do you have any
2 questions?

3 THE COURT: By the way, do you need a default if I
4 grant partial summary judgment?

5 MR. JAEGERS: Your Honor, the default would -- we
6 would prefer the default. The motion for partial summary
7 --

8 THE COURT: The reason I'm asking is because there
9 is not a default in this case in the classic sense of an
10 answer to a complaint never having been filed.

11 MR. JAEGERS: Yes, sir.

12 THE COURT: And when the Court directs a
13 corporation, you know, to get a lawyer or you could, you
14 know, be risking default, it has to be with respect to
15 some future default as opposed to -- as of the date of
16 the order that I sent out saying hey, you need to get a
17 lawyer to represent you. And if you don't, you risk
18 default.

19 There was no default as of the time of that order.
20 At that time of the order there were motions before the
21 Court that were fully briefed. And now the defendant has
22 failed to appear through counsel today, which may or may
23 not constitute a default in and of itself. But I don't
24 know why you could not get all the relief you want by
25 virtue of your motion for partial summary judgment.

1 MR. JAEGERS: Your Honor, first of all, it is a
2 motion for partial summary judgment. It does not address
3 Count One, which is a declaratory action for superior
4 rights in the mark.

5 THE COURT: Correct.

6 MR. JAEGERS: In which the default.

7 THE COURT: In the future, if there is no
8 defendant defending of the case, there could be a default
9 entered on Count One, but I don't have something before
10 me that I think can serve as the vehicle to do that. I
11 mean, for example, if you were to file tomorrow a motion
12 for partial summary judgment on that count and it wasn't
13 responded to, they're in default and I take it as
14 conceded. That could be done.

15 MR. JAEGERS: Your Honor, we are happy to do that
16 if Your Honor does not grant the default.

17 THE COURT: Yeah. I don't think default is
18 really, at least at this moment in time, the right
19 nomenclature that I should use in terms of anything other
20 than what's in the summary judgment motion. The summary
21 judgment motion I'm satisfied, and I want to hear the
22 rest of your arguments, that it's well-founded. There
23 are some issues relating to it that you've raised in
24 terms of fees and sanctions and so forth. But in terms
25 of the raw question of, is there an infringement or not?

1 I think that's fairly well established in your motion for
2 partial summary judgment. And the relief that you've
3 requested, as framed in your motion and in your proposed
4 orders, is fairly extensive in terms of using the marks
5 and being enjoined from prosecuting a trademark
6 application, being enjoined from using the marks, and so
7 forth.

8 All the things that are set forth in your proposed
9 order I'm fairly comfortable with. Well, there's a
10 couple of exceptions I'll talk to you about in about a
11 minute. But I think in terms of disposing of matters
12 today -- we can't dispose of the whole case today because
13 there's a lot of things that are still down the road.
14 You've only asked for summary judgment on the particular
15 matter before me, not all counts. There's also questions
16 as to if, for example, fees are to be awarded. There
17 needs to be documentation submitted to the Court for its
18 review, and we need to talk about some of the scope of
19 the relief you're asking for.

20 I just wanted to put that on the table in terms of
21 whether default is the right thing to talk about.

22 MR. JAEGER: Well, Your Honor, the CDN Management
23 case -- *CDG Management* case which I provided a copy to
24 the Court and also left a copy for Dr. Krishnamurthy on
25 his table as well. But that case factually parallels the

1 current case almost one for one. Plaintiff answered.
2 I'm sorry. The defendant answered in that case. They
3 subsequently had their lawyers withdraw.

4 THE COURT: Which case was it?

5 MR. JAEGERS: The *CDG Management*, Your Honor.

6 THE COURT: Okay.

7 MR. JAEGERS: Your Honor, that was also Exhibit 1
8 to my declaration to the default.

9 THE COURT: Okay. All right. I'll get that out.
10 Okay.

11 MR. JAEGERS: Your Honor, yes, it was Equal
12 Employment Opportunity Commission versus CDG Management.

13 THE COURT: That's why it is -- okay. That's why
14 I couldn't find it.

15 MR. JAEGERS: That is a District of Maryland case
16 decided just about a year and a half ago.

17 THE COURT: I was looking at the wrong place.
18 Yeah, I got it.

19 MR. JAEGERS: Factually it's very similar, and
20 it's highlighted on the page there. Defendants answered.
21 It's the second page, Your Honor. Defendants answered
22 the plaintiff's complaint. They had counsel. The
23 counsel withdrew, and the Court granted the motion to
24 withdraw on the same day it was filed. Then the Court
25 issued an order directing defendants to enter an

1 appearance on behalf of the corporate defendants within
2 30 days in order to comply with Local Rule 101.2.b which
3 requires a corporation to be represented by counsel.

4 The defendants were notified that a failure to
5 comply with the Court's order could result in the
6 imposition of sanctions or the entry of default judgment.
7 Defendants failed to comply with the order requiring an
8 entry of an appearance on behalf of the corporate
9 defendants, and that case resulted in a default. Those
10 are the identical facts to what we have here, an
11 answering defendant refusing to engage in the case,
12 basically.

13 THE COURT: Okay.

14 MR. JAEGERS: And that *CDG Management* case, Your
15 Honor, it uses the terminology "halting or arresting" the
16 litigation process. That's essentially what has happened
17 here. So, I do think that default is appropriate in this
18 case. You know, if Your Honor disagrees then obviously
19 we'll be happy to --

20 THE COURT: No. I'll make sure I look at that.

21 MR. JAEGERS: Okay.

22 THE COURT: Thank you.

23 MR. JAEGERS: Your Honor, the issues on the
24 default, as I mentioned earlier, are very similar to the
25 issues that we just discussed in the summary judgment.

1 And we have talked briefly about Dr. Krishnamurthy and
2 his wife being covered by any injunction. If the Court
3 needs any further discussion on that --

4 THE COURT: No.

5 MR. JAEGERS: -- you know, I'm happy to discuss
6 that. Your Honor, that leaves the issue of the sanctions
7 that we filed as a Rule 56(H) motion. Under 56(H), which
8 replaces Rule 56(G) that was discussed in a lot of
9 previous cases --

10 THE COURT: They would have to re-letter the rule
11 and drive us nuts.

12 MR. JAEGERS: Of course. Of course. But I just
13 mention that. Because when I first started reading, it
14 took me a second to make sure I was talking about the
15 same substantive concept of law. But if there's bad
16 faith by a party, or delay, the Court can order expenses,
17 including attorneys fees, and can order contempt and
18 other sanctions. Dr. Krishnamurthy's litigation
19 misconduct, Your Honor, is not limited to a failure to
20 engage in this case. Maybe his failure to engage in
21 discovery: He flatly refused to respond to the written
22 discovery request and wouldn't give us a deposition date.

23 It goes significantly further to the point where
24 he submitted a false affidavit under oath to this court
25 in opposition to our summary judgment. There is several

1 -- it's not just one false statement, Your Honor, there
2 are many. Let me address the first. At paragraph 10 and
3 paragraph 14 of his declaration, he states that the
4 defendant has not transacted any business in the United
5 States under the name "Life Technologies." That's false
6 and here is why. As we discussed earlier, the two
7 trademark applications that he filed in August of 2009
8 were Section 1(a) applications: I am currently using
9 these in commerce.

10 And the exhibits -- Your Honor, I believe they are
11 Exhibits Q and R to the Motion for Summary Judgment. If
12 you thumb through the pages that are in those exhibits,
13 you will see -- we've highlighted some of the information
14 there, but you will see the basis under which they're
15 filed. It's 1(a). And you will see that when you file a
16 1(a) application, there is always a field that you have
17 to fill in. Because if you're representing to the USPTO
18 that you are currently using them in commerce, they want
19 to know how long. And every single one was entered 2002,
20 I believe it was at least 2002, seven years before the
21 applications were filed. That is a flat out proactive
22 representation to the USPTO.

23 Your Honor, it's important to note that under 15
24 U.S.C. Section 1051(A)(3)(b), applications to the USPTO
25 are made under oath. You are swearing to the USPTO that

1 the statements in your application are accurate. He
2 didn't file one, he filed two with those applications.
3 As we discussed earlier, if you're going to file a use in
4 commerce, the USPTO wants to know what yours looks like
5 and how you're going to use it; how you've been using.

6 The specimens that he submitted are -- I can't
7 remember the Exhibit number, Your Honor, to the
8 Blankenbeckler Declaration to our sanctions motion. I
9 want to say it's Exhibit 1 or the first exhibit. He
10 submitted 15, maybe 20 pages of color photographs of
11 actual specimens with his corporate address, and Your
12 Honor you will note that there are two addresses. One is
13 the Treble Court that he currently uses, and the other is
14 a Bauer Avenue or a Bauer Road, I believe. The
15 expiration dates on the ones that use the Treble Lane
16 [sic] are roughly 2010, 2011. You can just look at that
17 right on the product. The ones that use the Bauer Road
18 address, the expiration dates tend to be around 2003.

19 So we don't know this, but we suspect that the
20 Bauer Road address was simply a previous address for the
21 defendant. In any event, those products are Maryland
22 addresses submitted by the defendant to the USPTO as
23 actual specimens of products in commerce since 2002, and
24 these were submitted August 2009.

25 Another document submitted in support of both

1 applications, Your Honor, were various newsletters. Now,
2 the one that we have included as Exhibit N to the
3 Blankenbeckler Declaration to our summary judgment,
4 that's just one of the newsletters. In that newsletter,
5 active voice statements. Not, we are going to do this
6 once we get running. These are statements of we are
7 currently doing this. We are -- Defendant is engaged in
8 drug development, etcetera.

9 Today -- here is a quote, Your Honor. "Today we
10 are" -- defendant is recognized -- "Today we are
11 recognized as a leader in all of these different things
12 in the USA." The newsletter talks about customers, the
13 implication obviously being that we have current
14 customers.

15 Now, the defendant also maintains an ongoing
16 business and has done so since 2002 or whenever the
17 company started. The point being, Your Honor, in terms
18 of transacting business. These actual specimens, the
19 newsletter and the sworn statements to the USPTO,
20 undeniably show that he has been transacting business.

21 The second false statement, paragraph 12 and
22 paragraph 14 of Dr. Krishnamurthy's declaration, the
23 defendant has no products and offers no services. Your
24 Honor, I refer right back to the specimens and the
25 newsletters submitted with the Section 1(a) applications

1 filed in August 2009.

2 The third false statement. Now, the opposition
3 states that defendant "had no awareness of Plaintiff's
4 existence prior to receiving the cease and desist letter
5 in late 2010." That's the opposition at Page 11. Since
6 -- and Dr. Krishnamurthy's deposition at paragraph 20
7 says, "Since learning of Plaintiff's existence and being
8 served with the complaint," he basically is inferring --
9 he doesn't come right out and say the very first time I
10 ever heard of the plaintiff is when I got the cease and
11 desist letter but that strongly -- that paragraph 20 of
12 his declaration strongly indicates that he is claiming to
13 the Court, in support of his opposition, that he didn't
14 learn of Plaintiff's existence until he was served with
15 the complaint.

16 And as we've discussed, Your Honor, August 27th --
17 and Your Honor, the complaint was filed in November -- I
18 believe December of 2010. The cease and desist letter
19 which, I believe, is Exhibit L to the Blankenbeckler
20 Declaration. It's either Exhibit L or Exhibit M, I want
21 to say, of November of 2010. So, he had a month.
22 November 2010 is when he's basically claiming that's the
23 first time I ever heard of plaintiff. Yet he's on actual
24 notice a year earlier, in October of 2009, when the USPTO
25 sent him an initial refusal for his two applications

1 because of the plaintiff's marks, referenced Plaintiff,
2 referenced Plaintiff's registration and pending marks,
3 and gave him actual specimens of the plaintiff's pending
4 marks -- pending applications.

5 And then again, August 23rd of 2010, the USPTO
6 issues notices of suspension of his August 27th 2009
7 trademark applications, and it references both of
8 Plaintiff's pending trademark applications. So he at
9 least -- in addition to the fact that he is a Life
10 Sciences person with a bachelors, a master's, and a Ph.D
11 in Life Sciences, he's claiming that the first time he
12 learned of Plaintiff was getting the cease and desist
13 letter in November of 2010. And the facts undeniably
14 show that he was aware, at least as of October 2009, of
15 actual notice because he had in his possession actual
16 specimens of the plaintiff's pending registrations.

17 And despite what he -- what he knew in October of
18 2009 he proceeds to file two more trademark applications
19 for the identical marks, just under different
20 international classes. And on June 7th 2010, the USPTO
21 issues office actions which are Exhibit H -- Exhibits H
22 and I to the Blankenbeckler Declaration initially
23 refusing the two February 2010 applications that he just
24 filed. And both of those applications -- both of those
25 office actions also reference -- both of those offices

1 actions also clearly reference Plaintiff's pending
2 applications and also give him additional copies of the
3 plaintiff -- specimens that Plaintiff submitted, which
4 are Life Technologies.

5 Your Honor, Defendant selected the exact same name
6 as the plaintiff. Exact same name. It's not even "Life
7 Technologies, Inc." "It's Life Technologies
8 Corporation." The products and services are similar.
9 He's located a mile from Plaintiff's old headquarters.
10 He adopted one of Plaintiff's old trademarks, the circle
11 with the L and "Life Technologies" under it. It's just
12 not credible that he did not know of Plaintiff's
13 existence before he got that cease and desist letter or,
14 in fact, when he filed any of the four trademark
15 applications that he filed.

16 Additionally, the fourth statement, Your Honor,
17 and this regards the Web sites. Your Honor, would you
18 excuse me so I can get a glass of water?

19 THE COURT: You may.

20 MR. JAEGERS: Thank you.

21 The fourth statement, Your Honor, and this deals
22 with the Web sites. The two -- there are any number of
23 Web site domain names out there that the defendant either
24 owns or controls or that he claims that the LT-India, the
25 Indian corporation, owns or controls. But with regard to

1 two of them, specifically, www.Life-Technologies.com and
2 then www.LifeTechnologiesCorp.com, he admits that he
3 registered both of those names, although he says he did
4 it on behalf of the Indian company. He states that he
5 just -- he doesn't have control over LT-India. I'll just
6 refer to that as "LT India," Your Honor.

7 He claims that he doesn't have any control; he was
8 a passive investor, a minor investment of, I think he
9 testified in his declaration, \$600. We have no way of
10 knowing if that's true or what level of control he
11 received for that. We don't know what anybody else of
12 his Indian partners contributed. \$50? \$10? We don't
13 know. Nonetheless, he says that he doesn't have control,
14 can't influence, and yet his declaration says, well, I've
15 persuaded my Indian partners to give up some of these
16 domain names but not others.

17 He claims that he facilitated the disabling of
18 some of these Web sites, Your Honor. He himself. If he
19 doesn't control or he can't maintain, how is it that he
20 is able to have the authority and the power to disable
21 some of the subject Web sites? Exhibit N, Your Honor, to
22 the Blankenbeckler Declaration are the colored screen
23 shots of the first Web site address that I just
24 mentioned, Life-Technologies.com. Now, we don't have
25 anything from LifeTechnologiesCorp.com. We don't have

1 any screen shots of that.

1 Your Honor, Exhibit N to the summary judgment
2 motion, it has the mark "Life Technologies" and "Life
3 Tech" both with and without that specialized design all
4 throughout.

5 THE COURT: Right.

6 MR. JAEGERS: But at the very bottom of every page
7 of Exhibit N it says "Life Technologies Corporation,
8 USA," and yet Dr. Krishnamurthy swears in his declaration
9 -- at paragraph 17 he says that the Life-Technologies.com
10 Web site is maintained by LT-India, and he and the
11 defendant are not responsible for the content of the Web
12 site. And yet it says "Life Technologies Corporation,
13 USA" right here, Your Honor, right at the bottom of every
14 page.

15 Going back, Your Honor, to Exhibit 1 to the
16 Anderson Declaration which we submit with our
17 supplemental letter briefs. That states Life
18 Technologies Corporation, a company incorporated under
19 the Indian Companies Act, which I would presume is
20 LT-India, represented by its director, Dr. Krishnamurthy
21 and his wife, having our office -- the Indian company has
22 its office at Life Technologies Corporation, 10135 Treble
23 Court, Rockville, Maryland, United States of America, and
24 also having our representative office in India. LT-India
25 is part of the defendant.

1 Exhibit One. This is a document from the Indian
2 Registrar of Trademarks. Absolutely false that LT- -- he
3 doesn't have control over LT-India. He can't main- -- he
4 has no control over the maintenance and what happens with
5 his Web sites? He says in his declaration at paragraph
6 17 he's not responsible for the content of the Web site,
7 and yet Exhibit One to the Anderson Declaration basically
8 says that LT-India is part of the defendant USA company,
9 and Exhibit N has "Life Technologies, USA" at the bottom
10 of every page. This is riddled with false statements,
11 his declaration.

12 And as we discussed earlier, Your Honor, he claims
13 that he mistakenly believed that the Section 1(a)
14 applications for trademark, the trademark applications
15 that he filed, the use and commerce applications that he
16 filed in August of 2009, were -- the specimens were to
17 show how future products were supposed to look and he
18 didn't know that they were required for actual -- to show
19 actual use in commerce. And he says that at paragraph
20 five of his second declaration which is his opposition to
21 our sanctions motion.

22 He also says that he asked his partners at Life
23 Tech India for specimens and they sent him pictures.
24 Well what's troubling to me, Your Honor, is that if in
25 August 2009 when he filed those first two use in commerce

1 trademark applications, if he asked his Indian partners
2 for specimens of how future products would look, why do
3 most of those products have expiration dates of 2003, six
4 years before he requested anything? These weren't future
5 products. These were actual products in existence at the
6 time with Defendant's name, with Defendant's address.
7 These cannot be how future products would look if they
8 had an expiration date saying that the products expired
9 six years before he made the request.

10 Your Honor, I don't know how many of those
11 specimens were for the Bauer Avenue address with the 2003
12 expiration dates, but there are several. Even the ones
13 for the Treble Court address have -- here is one, Your
14 Honor. It's document 21-4, Page 9 of 34 and has a
15 manufacture date of April 2006. That's three years
16 before he filed the trademark application and asked his
17 partners for specimens. How can a product be
18 manufactured before it exists? It existed at the time.
19 These are not future products. His statement about the
20 belief that they were future products is just not true,
21 and it goes to a material issue in this case, Your Honor,
22 which is liability for trademark infringement.

23 Now we also discussed earlier, Your Honor, that
24 throughout this case, and this is perfectly shown by his
25 declarations, the one he submitted in opposition to our

1 summary judgment and also the one that he submitted in
2 opposition to our sanctions motion. He has done all of
3 this conduct, this bad conduct, bad conduct with regard
4 to the trademark -- infringing our trademark; bad conduct
5 with respect to this litigation. This is litigation
6 misconduct.

7 Independent of all the bad faith and bad intent
8 that he had with regard to purposely trading on our good
9 name and reputation, that's bad enough. But then he
10 comes in to court, after forcing us to come here, and
11 engages in this litigation misconduct and submitting a
12 false declaration to the Court. Every single point that
13 we've discussed Your Honor is material. These aren't
14 just minor issues. Everything we discussed goes straight
15 to the heart of our case, and he has blamed everything
16 everybody. He's blamed his lawyers; blamed his graphic
17 designer; blamed the writer that he hired for the
18 newsletters submitted with his Section 1(a) application.
19 He blames his Indian partners for any number of things.
20 But the point is, Your Honor, he's got to be forced to
21 confront his conduct and suffer the invalidating
22 consequences.

23 Your Honor, do you have any questions about
24 anything that we've discussed or not discussed?

25 THE COURT: No. I think you've covered it quite

1 comprehensively.

2 The Court has before it today three motions -- you
3 can have a seat. I'm just going to tell you what I'm
4 going to do. One is a Motion for Partial Summary
5 Judgment as to liability for trademark infringement and
6 attorney's fees for exceptional infringement. The second
7 is a Motion for Sanctions. The third is a request for
8 default and a Motion for Default Judgment.

9 The factual circumstances of this case have been
10 fairly well laid out by counsel for the plaintiff today
11 and I will adopt his description of the facts for
12 purposes of this opinion.

13 The defendant would like to portray this as a
14 Goliath going after David case, and I just simply do not
15 agree with that. Whether one party is bigger than the
16 other is really not the question. The question is
17 whether somebody has violated U.S. Trademark law, and
18 it's clear to me that the defendant has done precisely
19 that and has done so willfully, and has attempted to
20 mislead this court. The filings of this defendant before
21 the U.S. Patent and Trademark Office are hopelessly at
22 odds with sworn affidavits that he submitted to this
23 court and make the affidavit a sham in almost every
24 respect.

25 The plaintiff in this case is a corporation that,

1 obviously, is larger than the defendant corporation, but
2 it has spent an enormous resources in developing its mark
3 and its company. It is a company with -- for example, in
4 2010 with \$3.6 billion in revenue selling 50,000 products
5 used by more than 75,000 customers around the world, and
6 has spent considerably large sums of money, over
7 \$50,000,000 in 2010 alone, on promoting its products and
8 specifically, of course, the marks in this case.

9 The defendant corporation was originally
10 incorporated in Maryland in 2002 with the name Life Tech,
11 Inc. In 2004 it changed its name to Life Technologies,
12 Inc. Then followed it up in 2005 with a change to Life
13 Technologies Corporation which is not close; it's exactly
14 the same name as the name of the plaintiff.

15 It professes to have been unaware of the existence
16 of the plaintiff, but the documentary evidence before the
17 Court shatters any credibility of that contention. This
18 is clearly somebody who was out to and sought to utilize
19 the name and the mark of the plaintiff and got caught,
20 and caught by its own filings at the Patent and Trademark
21 Office. It's something that simply cannot be
22 countenanced if our system of trademark protection in
23 this country is to have any meaning whatsoever.

24 The plaintiff attempted to bring to the defendant
25 into compliance with trademark laws on a pre-filing basis

1 but was unsuccessful in reaching an agreement and filed
2 the case in this court on December 10th 2010. The
3 parties have presented to the Court the three motions
4 that I've previously mentioned, and I will now address
5 the three motions.

6 The Motion for Partial Summary Judgment is
7 governed by Rule 56 which authorizes a court to enter a
8 summary judgment if there's no genuine issue as to any
9 material fact and the moving party is entitled to
10 judgment as a matter of law. The motion in this case was
11 a motion for partial summary judgment. That was not
12 addressed to the entire complaint but only to certain
13 portions of the complaint.

14 The Court is required to give the benefit of all
15 inferences to the non-moving party and I have done so. I
16 find, though, there's little solace that the defendant
17 could take in the inferences that are permitted to it
18 under Rule 56 as the party opposing summary judgment.
19 The evidence here is overwhelming of infringement and
20 willfulness in doing so, and filing pleadings with this
21 court that are almost laughably false.

22 Counsel for the plaintiff has carefully addressed
23 the standards for infringement, which require proof that
24 it possesses a mark; second, that the defendant used the
25 mark; three, that the defendant's use of the mark

1 occurred in commerce; and four, the defendant used the
2 mark in connection with a sale, offering for sale,
3 distribution, or advertising of goods and services. And
4 five, that the defendant used the mark in a manner likely
5 to confuse consumers. There can be little doubt in this
6 case that all of those factors for a *prima facie* case
7 have been met, especially when the defendant is using the
8 exact same name that has been used by the plaintiff since
9 its inception and has been used by it to establish its
10 marks.

11 There have been efforts to resolve this matter
12 prior to this hearing; they have been unsuccessful. I'm
13 not going to go into the question of whether one side or
14 the other was asking for too much or giving too little in
15 connection with those, but it is clear to me that this
16 defendant has a significant connection with an Indian
17 company with a name similar to this, the LT-India, and it
18 is certainly appears to the Court that his relationship
19 with that company is quite significant and that he has
20 acted in a way to avoid the responsibility that he, his
21 fellow officers and employees and entities with which
22 he's affiliated have to the owners of the mark in this
23 case.

24 The plaintiff has addressed the factors for
25 injunctive relief which were most recently addressed by

1 the Supreme Court in the case of eBay, Inc. versus
2 America Exchange, LLC, a 2006 case in the Supreme Court.
3 In that case, the Court applied the more traditional
4 standards for injunctive relief to the arena of
5 trademark, and that requires a demonstration the
6 plaintiff risks suffering irreparable harm; monetary
7 remedies are inadequate to compensate the plaintiff's
8 injury; the balance of hardship or equities favors the
9 plaintiff; and the public interest would not be disserved
10 by an injunction. There is little doubt in my mind that
11 all four of those factors are richly present in this
12 case.

13 While I recognize that the finding of irreparable
14 harm and trademark infringement cases was at one time
15 considered virtually automatic prior to the *eBay*
16 decision, in this case I'm satisfied that the plaintiff's
17 evidence has demonstrated the irreparability of harm
18 based on the facts of this particular case. This is a
19 person who has utilized the exact same name as the
20 plaintiff, with an office in quite close proximity to the
21 plaintiff, selling the same services to the same
22 customers. Obviously one is larger than the other, but
23 that's not a factor here at all.

24 The plaintiff has devoted enormous resources to
25 the development of its brand and its business throughout

1 the world and is not required to tolerate somebody
2 mimicking their exact same name with the exact same
3 products right in their backyard. It is clear to me that
4 irreparability of harm is demonstrated factually in this
5 case, not just by virtue of the fact that it's -- that a
6 court concludes that a case of trademark infringement has
7 been found.

8 It is clear to me also that money damages are not
9 adequate, and that the balance of hardships and equities
10 heavily favors the plaintiff in this case. There is a
11 very real threat of further infringement, especially in
12 light of the defendant corporations playing fast and
13 loose with facts and entities and other matters that give
14 the Court no confidence that there will not be further
15 injury to the plaintiff and that it's difficult to
16 calculate what it might be.

17 Finally, there's a heavy interest in preventing
18 trademark infringement, as protected by U.S. law. And I
19 conclude, therefore, that the plaintiff is entitled to
20 injunctive relief.

21 The recovery of fees and costs is not automatic in
22 trademark cases. Section 1117(A) of the Lanham Act
23 provides that in exceptional cases, the Court may award
24 reasonable attorney fees to the prevailing party. Courts
25 have defined that to be one involving willful,

1 deliberate, fraudulent, or malicious conduct, and in the
2 Fourth Circuit, in the Scotch Whisky versus Majestic
3 Distilling case, must make a finding of bad faith.
4 If the Court does determine that the case is exceptional,
5 the matter of awarding fees is within the Court's
6 discretion.

7 I conclude, on the basis of what I have before me,
8 that this is truly an exceptional case involving
9 demonstrated bad faith, and bad faith in the filing of
10 documents with this court as well. I conclude,
11 therefore, that this is an exceptional case within the
12 four corners of Section 1117(A) and that fees are in my
13 -- within my discretion and should be awarded.

14 I'll turn, then, to the Motion for Sanctions. The
15 plaintiff has moved for sanctions and cites Rule 56(H)
16 which provides that if the Court is satisfied that an
17 affidavit has been submitted in bad faith or solely for
18 delay, the Court, after notice and reasonable time to
19 respond, and may order the submitting party to pay the
20 other party reasonable expense, including attorneys fees
21 it incurred as a result. The offending party or attorney
22 may also be held in contempt or subject to other
23 appropriate sanctions.

24 The Court also has the inherent authority under
25 the *Nasco* case in the Supreme Court to take appropriate

1 action when there have been actions taken in litigation
2 that are inappropriate and/or in bad faith. In terms of
3 the standard of bad faith, courts have connoted that to
4 include an action taken with any colorable, legal, or
5 factual basis. I think the emphasis here has to be on
6 factual basis in connection with an affidavit that is so
7 laughably false. To make a finding of bad faith, the
8 Court is required to show -- it must be presented with
9 clear evidence of bad faith or vexatiousness. I conclude
10 that has been done and done quite capably in this case.

11 I won't review in detail all of the statements
12 made by the affiant in this case on behalf of the
13 defendant corporation, but laughably incorrect or its
14 statement that it is has not transacted any business in
15 the U.S. under the name "Life Technologies," which is
16 completely at odds with what it told another agency of
17 the federal government. Not this court but the U.S.
18 Patent and Trademark Office.

19 It also made the statement that it has no products
20 and offers no services, which is also contradicted by
21 documents filed with the U.S. Patent and Trademark
22 Office. And laughably false is the statement that he had
23 no awareness of Plaintiff's existence prior to receiving
24 the cease and desist in late 2010 which is absurd when
25 one looks at the facts of this case in terms of its

1 history. But most importantly, looking at what happened
2 to the U.S. Patent and Trademark Office long before the
3 cease and desist letter was received. He just plainly
4 got caught in a lie.

5 The Court finds his statements with respect to the
6 relationship with LT-India to be extremely suspect and
7 entirely at odds with the actions taken by that entity
8 and from the authorization form that he filed with the
9 Indian trademark office indicating he's a director of
10 LT-India and that the address of LT-India is, believe it
11 or not, Rockville, Maryland, the same address that of the
12 defendant corporation.

13 I conclude on the basis of all these factors that
14 I will grant all three motions in favor of the plaintiff,
15 I will enter an order that is similar but not identical
16 to what the plaintiff has submitted.

17 First of all, I will grant the Motion for Partial
18 Summary Judgment. I will include in that order the
19 findings that were contained in the proposed order
20 submitted by the plaintiff, but with some exceptions.
21 First, I will, at several different places in the order
22 where it refers to "ordering the defendant and its
23 employees, servants, agents, affiliates, distributors,
24 dealers, attorneys, successors, and/or assigns," I'm
25 going to insert the words, "including, but not limited

1 to the president of the corporate defendant and his
2 wife." I will do that in paragraphs one and two of the
3 proposed order submitted by the plaintiff.

4 I will -- in a slight departure from paragraph
5 eight of the plaintiff's proposed order, I will provide
6 that the defendant shall be required by subsequent order
7 to pay plaintiff's costs, expenses and attorney's fees
8 incurred in the action. Then I'll put a proviso in that
9 the plaintiff is directed to file an affidavit in support
10 of an award in conformity of Appendix B of the Local
11 Rules of this court on or before April 13.

12 Then with regard to the Motion for Sanctions, I
13 will grant that motion. I will order that the
14 declaration of Krishnamurthy Govindaraj is stricken. I
15 will also provide that the defendant shall be required by
16 subsequent order to pay to the plaintiff an award of
17 fees, and I'll put in the same proviso that the plaintiff
18 is directed to file an affidavit that conforms with
19 Appendix B of the rules of this court on or before April
20 13.

21 Finally, with respect to the default motion. I'm
22 satisfied, having reviewed the case authority, that the
23 plaintiff provided that is an appropriate motion to
24 grant. I, therefore, will grant it. I will include in
25 the order the provisions that are in the proposed order

1 submitted by the plaintiff. I will, however, make some
2 modifications to it. In those places where it refers to
3 who's being ordered or enjoined, that are going to be
4 similar to those that I made when I mentioned the summary
5 judgment motion. Namely, that I'm not going to mention
6 the president of the corporate defendant and his wife by
7 name directly, but I will -- when we get to the end of
8 the phraseology about officers, directors...accessors and
9 assigns, I'll put in, "including but not limited to"
10 those two individuals. So they will be clearly covered
11 by it. And that will be done in all the places where
12 that appears.

13 I believe that disposes of all the motions. I
14 will be entering a very comprehensive order that includes
15 all of these and will be providing it to the parties.

16 This does not end the case, so we have need to
17 figure out what happens next. We do need to address the
18 question of fees, and I'll have to consider what I get
19 from the plaintiff with regard to that.

20 As a result of granting the default, what's left
21 in the complaint? I think that's it, isn't it?

22 MR. JAEGER: Your Honor, I don't believe there is
23 anything else. There's no counter-claim.

24 THE COURT: I think, then, the only thing that is
25 remaining is the fee award. And you have also included a

1 requirement that the defendant account to the plaintiff,
2 and that you're entitled to treble damages. We haven't
3 got that accounting yet, so I can't do an award of
4 damages until I get that.

5 MR. JAEGERS: Your Honor, we have -- we're not
6 able to conduct discovery. Interrogatories and document
7 requests were never responded to. We don't have evidence
8 of --

9 THE COURT: Well, what I will do is I will order,
10 then, that discovery be reopened for -- what period of
11 time would you like to have to get that done?

12 MR. JAEGERS: Your Honor, I would normally say
13 maybe six or eight weeks. But we were not able to have
14 success with cooperation when the defendant was
15 represented by counsel, and I'm not overly confident that
16 we'll have success now that he's not represented by
17 counsel. Perhaps eight weeks? Twelve weeks? We can
18 report back to you if we're unsuccessful.

19 THE COURT: Why don't I give you until July 13?

20 MR. JAEGERS: That would be great, Your Honor.
21 Just to be clear, that is limited to plaintiff's
22 discovery only. The defendant --

23 THE COURT: I'm going to authorize that the
24 plaintiff is granted leave to conduct additional
25 discovery in support of an award of damages until July

1 13, 2012. What I'm anticipating is after that discovery
2 is completed that you will submit something to the Court
3 in support of an award of damages, and any argument you
4 wish to make with the trebling would be appropriate
5 which, I assume, you take that position.

6 I want to make certain that since the corporate
7 defendant's president is here that I don't expect any
8 shenanigans with respect to discovery. If he's noticed
9 for a deposition, he's required to appear. I'm expecting
10 full compliance with the discovery processes of this
11 court, and we'll take appropriate actions if I conclude
12 that in any way, shape or manner that's being violated.

13 MR. JAEGERS: Thank you.

14 THE COURT: Thank you very much.

15 MR. JAEGERS: Your Honor, I'm sorry. I didn't
16 realize you were completely finished.

17 THE COURT: I'm done.

18 MR. JAEGERS: I just had a question I recall in
19 your Local Rules that motions for fees are due 14 days
20 after entry of judgment.

21 THE COURT: No. I just trumped that.

22 MR. JAEGERS: I just wanted to make sure.

23 THE COURT: That's been trumped. Make sure you
24 read the Fourth Circuit case. It's not coming to me
25 right now. It's about a -- is it Equifax? There's a

1 recent case in the Fourth Circuit that a lot of people
2 stumble over. I think it's Equifax versus somebody, or
3 somebody versus Equifax that means you have to give some
4 indication that the fees are consistent with the market.
5 Okay?

6 MR. JAEGERS: Yes, sir.

7 THE COURT: Take a look at Appendix B, and then
8 take a look at that rule -- have a look at that case, and
9 I think you will see what needs to be put into any
10 request for fees.

11 MR. JAEGERS: Okay. Thank you.

12 THE COURT: Thank you.

13 (Off the record at 1:05 p.m.)

14

15 **CERTIFICATE**

16 I, Tracy Rae Dunlap, RPR, CRR, an Official Court
Reporter for the United States District Court of
17 Maryland, do hereby certify that I reported, by machine
shorthand, the proceedings had in the case of LIFE
18 TECHNOLOGIES CORPORATION versus LIFE TECHNOLOGIES
CORPORATION, Civil Action Number RWT-10-3527 on March 12,
19 2012.

20 In witness whereof, I have hereto subscribed my
name, this 26th day of March 2012.

21
22 ____/S/____ Tracy Rae Dunlap
23 TRACY RAE DUNLAP, RPR, CRR
24 OFFICIAL COURT REPORTER
25